

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ANNYE J. THOMAS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: _2:06-Cv-1101-WKW-WC
)	
AMERICAN HERITAGE LIFE)	Formerly CV-2006-2789
INSURANCE COMPANY, et al.,)	In the Circuit Court of Montgomery
)	County, Alabama
Defendants.)	

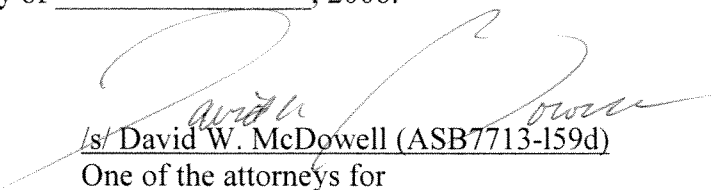
DEFENDANT ALLSTATE LIFE INSURANCE COMPANY'S MOTION TO DISMISS

Defendant ALLSTATE LIFE INSURANCE COMPANY, enters this limited appearance to contest sufficiency of process and sufficiency of service of process under Federal Rules of Civil Procedure 12(b)(2), (4) and (5). In support of this Motion, Allstate Life Insurance Company submits the following:

1. "A federal court may consider the sufficiency of process after removal and does so by looking to the state law governing process." *Usatorres v. Marina Mercante Nicaraguenses*, 768 F.2d 1285, 1286 n.1 (11th Cir. 1985).
2. The Plaintiff did not comply with the provisions of Alabama law governing service of process. Allstate Life Insurance Company attaches hereto its Motion to Dismiss filed in Montgomery County, Alabama in connection with this case, along with the affidavit of Deborah Burgi, and it hereby adopts and incorporates the arguments set forth in that motion as if fully set forth herein.

WHEREFORE, based on the foregoing, Allstate Life Insurance Company moves for an Order dismissing the Plaintiff's Complaint against it without prejudice, costs taxed as paid.

Respectfully submitted this 18 day of December, 2006.


/s/ David W. McDowell (ASB7713-159d)

One of the attorneys for
Allstate Life Insurance Company

OF COUNSEL:

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC
Wachovia Tower, Suite 1600
420 Twentieth Street North
Birmingham, Alabama 35203
Telephone: (205) 328-0480 –
Facsimile: (205) 322-8007

CERTIFICATE OF SERVICE

I, certify that on the 18 day of December, 2006, a copy of the foregoing document was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

Rodney Newman Caffey, Esquire
Attorney at Law
Post Office Box 2012
Montgomery, Alabama 36102
(334) 220-4310


BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

By: /s/ David W. McDowell
(ASB-7713-169d)

EXHIBIT - A



AlaFile E-Notice

03-CV-2006-002789.00

Judge: WILLIAM A. SHASHY

To: DAVID MCDOWELL
dmcdowell@bakerdonelson.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANNYE J THOMAS VS ALLSTATE LIFE INSURANCE ET AL
03-CV-2006-002789.00

The following matter was FILED on 12/11/2006 3:15:15 PM

D001 ALLSTATE LIFE INSURANCE COMP
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: MCDOWELL DAVID W]

Notice Date: 12/11/2006 3:15:15 PM

MELISSA RITTENOUR
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36102

334-832-4950
melissa.rittenour@alacourt.gov

STATE OF ALABAMA Unified Judicial System		Revised 2/14/05	Case No. CV200600278900
03-MONTGOMERY		<input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	
ANNIE J THOMAS VS ALLSTATE LIFE INSURANCE ET AL		CIVIL MOTION COVER SHEET <i>Name of Filing Party:</i> D001 - ALLSTATE LIFE INSURANCE COMP	
<i>Name, Address, and Telephone No. of Attorney or Party. If Not Represented.</i> DAVID MCDOWELL 420 NORTH 20TH STREET, STE. 1600 BIRMINGHAM, AL 35203 Attorney Bar No.: MCD049		<input type="checkbox"/> Oral Arguments Requested	

TYPE OF MOTION

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment (\$50.00) Renewed Dispositive Motion (Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56 (\$50.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00) *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees. <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input checked="" type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule _____ (Subject to Filing Fee)

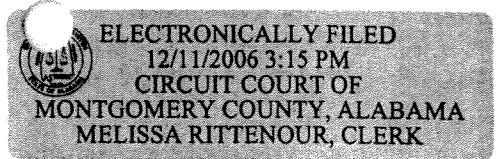
Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship ☐

Date:
12/11/2006 3:11:49 PM

Signature of Attorney or Party:
/s/ DAVID MCDOWELL

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
CIVIL DIVISION

ANNYE J. THOMAS c/o, THE ESTATE OF)
LAKECIA Q. BROADNAX,)
)
Plaintiff,)
v.)
) Case No.: CV-2006-2789
ALLSTATE LIFE INSURANCE COMPANY, et)
al.,)
)
Defendants.)

DEFENDANT ALLSTATE LIFE INSURANCE COMPANY'S MOTION TO DISMISS

COMES now Defendant, ALLSTATE LIFE INSURANCE COMPANY, and enters this limited appearance to contest sufficiency of process and sufficiency of service of process under Alabama Rules of Civil Procedure 12(b)(2), (4) and (5). In support of this Motion, Allstate Life Insurance Company submits the following:

1. On November 8, 2006, the Plaintiff filed the above-styled action against Allstate Life Insurance Company and American Heritage Life Insurance Company.
2. A Summons and Complaint was served on Ben Pugh at 2100 Spruce Street, Montgomery, Alabama 36106.
3. Ben Pugh is not an officer, a managing or general agent, or any agent authorized by law to receive service of process for Allstate Life Insurance Company. (Affidavit of Deborah Burgi, attached hereto as Exhibit 1).
4. The Plaintiff's attempt to serve Allstate Life Insurance Company was improper under Rule 12(b)(2), (4) and (5) because the summons was not directed to an officer, a

managing or general agent, or a registered agent as required by Rule 4(c)(6) of the Alabama Rules of Civil Procedure.¹

WHEREFORE, based on the foregoing, Allstate Life Insurance Company moves for an Order dismissing the Plaintiff's Complaint against it without prejudice, costs taxed as paid.

Respectfully submitted this 11 day of December, 2006.

/s/ David W. McDowell
David W. McDowell (MCD049)
One of the attorneys for
Allstate Life Insurance Company

OF COUNSEL:
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC
Wachovia Tower, Suite 1600
420 Twentieth Street North
Birmingham, Alabama 35203
Telephone: (205) 328-0480
Facsimile: (205) 322-8007

¹ Furthermore, without waiving its right to contest service and the Court's lack of jurisdiction over it, Allstate Life Insurance Company points out that it is not a proper party to this lawsuit. The Plaintiff's claims arise from a life insurance policy issued by American Heritage Life Insurance Company. American Heritage Life Insurance Company is a wholly-owned subsidiary of The Allstate Corporation. Allstate Life Insurance Company is wholly owned by Allstate Insurance Company, which is owned by The Allstate Corporation. Allstate Life Insurance Company and American Heritage Life Insurance Company are two distinct entities.

CERTIFICATE OF SERVICE

I, certify that on the 11 day of December, 2006, a copy of the foregoing document was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

Rodney Newman Caffey, Esquire
Attorney at Law
Post Office Box 2012
Montgomery, Alabama 36102
(334) 220-4310

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

By: /s/ David W. McDowell (MCD049)

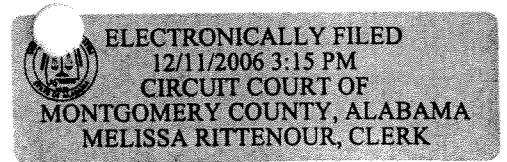
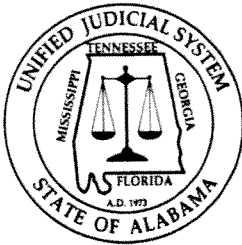


EXHIBIT - 1



AlaFile E-Notice

03-CV-2006-002789.00

Judge: WILLIAM A. SHASHY

To: ALLSTATE LIFE INSURANCE COMP (PRO SE)
% BEN PUGH
2100 SPRUCE ST
MONTGOMERY, AL 36106

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANNYE J THOMAS VS ALLSTATE LIFE INSURANCE ET AL
03-CV-2006-002789.00

The following matter was FILED on 12/11/2006 4:09:46 PM

D001 ALLSTATE LIFE INSURANCE COMP
MOTION TO AMEND

[Attorney: MCDOWELL DAVID W]

Notice Date: 12/11/2006 4:09:46 PM

MELISSA RITTENOUR
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36102

334-832-4950
melissa.rittenour@alacourt.gov

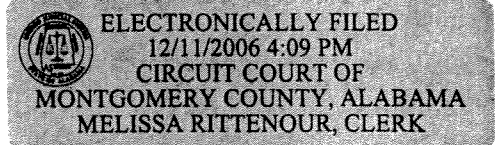
STATE OF ALABAMA Unified Judicial System		Revised 2/14/05	Case No. CV200600278900
03-MONTGOMERY <input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court			
ANNIE J THOMAS VS ALLSTATE LIFE INSURANCE ET AL		CIVIL MOTION COVER SHEET <i>Name of Filing Party:</i> D001 - ALLSTATE LIFE INSURANCE COMP	
<i>Name, Address, and Telephone No. of Attorney or Party. If Not Represented.</i> DAVID MCDOWELL 420 NORTH 20TH STREET, STE. 1600 BIRMINGHAM, AL 35203 Attorney Bar No.: MCD049		<input type="checkbox"/> Oral Arguments Requested	

TYPE OF MOTION

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00) Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56(\$50.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00) *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees. <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input checked="" type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship <input type="checkbox"/>	Date: 12/11/2006 4:08:21 PM	Signature of Attorney or Party: /s DAVID MCDOWELL
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*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
 **Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
CIVIL DIVISION

ANNYE J. THOMAS c/o, THE ESTATE OF)
LAKECIA Q. BROADNAX,)
)
Plaintiff,)
v.)
) Case No.: CV-2006-2789
ALLSTATE LIFE INSURANCE COMPANY, et)
al.,)
)
Defendants.)

**ADDENDUM TO MOTION TO DISMISS AND
NOTICE OF SUBSTITUTION OF EXHIBIT TO DEFENDANT ALLSTATE LIFE
INSURANCE COMPANY'S MOTION TO DISMISS**

Defendant ALLSTATE LIFE INSURANCE COMPANY, pursuant to Rules 10(c) and 12(b) of the Alabama Rules of Civil Procedure, hereby gives notice of the substitution of the attached Exhibit 1 in place of the Exhibit that was attached to its Motion to Dismiss filed in this case on December 11, 2006. The Exhibit attached to the Motion to Dismiss filed on December 11, 2006, was incorrect. The Exhibit attached to this Notice is the correct Exhibit, and is the Exhibit referred to in this Defendant's Motion to Dismiss.

Respectfully submitted this 11th day of December , 2006.

/s/ David W. McDowell
David W. McDowell (MCD049)
One of the attorneys for
Allstate Life Insurance Company

OF COUNSEL:
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC
Wachovia Tower, Suite 1600
420 Twentieth Street North
Birmingham, Alabama 35203
Telephone: (205) 328-0480 Facsimile: (205) 322-8007

CERTIFICATE OF SERVICE

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Rodney Newman Caffey, Esquire
Attorney at Law
Post Office Box 2012
Montgomery, Alabama 36102
(334) 220-4310

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

By: /s/ David W. McDowell (MCD049)

EXHIBIT - 1

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
CIVIL DIVISION

ANNYE J. THOMAS c/o, THE ESTATE OF)
LAKECIA Q. BROADNAX,)
)
Plaintiff,)
v.) Case No.: CV-2006-2789
ALLSTATE LIFE INSURANCE COMPANY, et)
al.,)
)
Defendants.)

AFFIDAVIT OF DEBORAH BURGI

I, Deborah Burgi, having been duly sworn according to law, do hereby depose and say as follows:

1. I am over the age of 19 years, and I am competent to give this Affidavit. I hold the title of Assistant Counsel II in the Law & Regulation Department of Allstate Financial. Allstate Financial is a part of Allstate Insurance Company. The Law & Regulation Department provides legal advice to various companies in which Allstate Insurance Company owns a controlling interest. I understand that I am providing this Affidavit in support of Allstate Life Insurance Company's Motion to Dismiss.
2. In the course of my employment as Assistant Counsel II for Allstate Insurance Company, I have developed a working knowledge of entities that are authorized to accept service of process on behalf of Allstate Life Insurance Company.
3. Allstate Life Insurance Company is an Illinois corporation with its principal place of business located at 3100 Sanders Road, Northbrook, Illinois 60062.

4. Ben Pugh of 2100 Spruce Street, Montgomery, Alabama 36106, is neither an officer nor a managing or general agent, nor an agent authorized by law to receive service of process for Allstate Life Insurance Company.

ALLSTATE LIFE INSURANCE COMPANY

By:

Deborah Burgi

Deborah Burgi
Assistant Counsel II,
Allstate Insurance Company

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Marcelle E. Gillis, the undersigned, a Notary Public in and for said County in said State, hereby certify that Deborah Burgi, whose name is signed to the foregoing document, and who is known to me, acknowledged before me on this date that, being informed of the contents of this document executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 7th day of December, 2006.



Marcelle E. Gillis

Notary Public

My Commission Expires: June 7, 2008